

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL MACHINERY AND EQUIPMENT COMPANY,)	CASE NO. 1:21-CV-1422
)	
Plaintiff,)	JUDGE CHARLES E. FLEMING
)	
vs.)	MAGISTRATE JUDGE JONATHAN D. GREENBERG
)	
MICHAEL TOUSEY, <i>et al.</i> ,)	OPINION AND ORDER ADOPTING
)	SPECIAL MASTER’S REPORT AND
Defendants.)	RECOMMENDATION
)	

On January 11, 2024, the Court appointed a Special Master to address pretrial matters. (ECF No. 219). The appointment stated, “the Court may refer any motion, including motions under Rule 702 and Rule 56, to the Special Master for a report and recommendation if the Court determines that doing so is appropriate and will assist the Court in effectively and timely resolving the motion.” (*Id.* at PageID #5975). Pursuant to this, the Court referred two pending motions to dismiss to the Special Master for the preparation of a Report and Recommendation (“R&R”). (Order [non-document] dated 08/07/2024).

On August 30, 2024, the Special Master submitted an R&R recommending that the Court grant in part and deny in part Defendant Tousey’s and the Corporate Defendants’ motions to dismiss. (ECF No. 253). The R&R provided an objection deadline of September 13, 2024. (*Id.*). As of the date of this decision, neither party filed any objections. Federal Rule of Civil Procedure 53(f) governs the Court’s review of a Special Master’s R&R. The Court must decide *de novo* all objections to findings of fact or conclusions of law made or recommended by the Special Master. F.R.C.P. § 53(f)(3)–(4). Otherwise, the Court “may adopt or affirm, modify, wholly or partly

reject or reverse, or resubmit to the master with instructions.” F.R.C.P. § 53(f)(1).

As the parties did not object to any portion of the Special Master’s R&R, the Court **ADOPTS** the Special Master’s Report and Recommendation (ECF No. 253), incorporates it fully herein by reference, and **DENIES** in part and **GRANTS** in part Defendants’ motions to dismiss. (ECF Nos. 221 and 222). Specifically, the Court **DENIES** Defendant Tousey’s motion to dismiss count III based on OUTSA preemption. Defendant Tousey’s motion to dismiss count V based on OUTSA preemption is **GRANTED** as to ¶¶169–70 and 173 but **DENIED** as to ¶¶171–72. Defendant Tousey’s motion to dismiss count VII based on OUTSA preemption is **GRANTED** as to ¶191 and **DENIED** as to ¶189. The Corporate Defendants’ motion to dismiss count X is **DENIED**. The Corporate Defendants’ motion to dismiss count IX is **GRANTED** in part and **DENIED** in part. As far as the tortious interference claim alleges interference with Tousey’s business relationship with Federal, count IX is **DISMISSED WITH PREJUDICE**. However, count IX as it pertains to Federal’s relationship with OEMs and other third parties and Tousey’s contractual obligations to Federal survives the motion to dismiss. Defendants shall answer Plaintiff’s second amended complaint (ECF No. 220) by September 23, 2024.

IT IS SO ORDERED.

Date: September 17, 2024



CHARLES E. FLEMING
UNITED STATES DISTRICT JUDGE